

AN ORDINANCE 2006-06-08-0688

**AUTHORIZING THE EXECUTION OF A MURAL PROGRAM AGREEMENT WITH THE JEFFERSON NEIGHBORHOOD ASSOCIATION, WITH THE CITY PROVIDING \$4,000.00 FOR TWO MURALS TO BE LOCATED AT THE CORNERS OF DONALDSON AND WILSON AND CULEBRA AND EL CENTRO, FROM THE COMMUNITY AND VISITOR FACILITIES FUND FOR THE GRAFFITI ABATEMENT PROGRAM.**

\* \* \* \* \*

**WHEREAS**, on January 29, 2004, City Council authorized the establishment of the Graffiti Abatement Program utilizing project balances from various community projects in Council Districts 6, 7, 9 and 10; and

**WHEREAS**, under the Mural Program Agreement proposed by this Ordinance, the Jefferson Neighborhood Association ("Association") will provide the City with two murals to assist the City with its graffiti abatement efforts; and

**WHEREAS**, for the first mural, the Association will contract with artist Fernando Andrade and partner with the Jefferson United Methodist Church on the wall located on Donaldson and Wilson, which has a long history of graffiti problems; and

**WHEREAS**, the partners and members of the community worked closely with the artist to develop the design of the mural and, in order to create a sense of community ownership, the artist will involve young people from Jefferson High School and the church's youth ministry group to help paint the mural; and

**WHEREAS**, the second mural is a partnership between the Association, Mr. Andrade, the Culebra Park Neighborhood Association and the local business on the corner of Culebra and El Centro; and

**WHEREAS**, in order to produce this mural, the artist will involve youth from the community and will culminate the project with a mural dedication recognizing those youth who helped in its creation; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The terms and conditions of a Mural Program Agreement with the Jefferson Neighborhood Association, providing \$4,000.00 for two murals to be located at

the corners of Donaldson and Wilson and Culebra and El Centro, are authorized and approved.

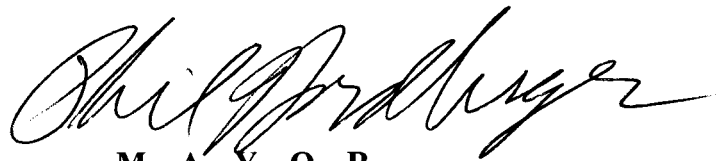
**SECTION 2.** The City Manager and her designee, the Executive Director of the Office of Cultural Affairs, are authorized to execute the Mural Program Agreement. A copy of the Agreement, which has been previously executed by the Jefferson Neighborhood Association, is attached to this Ordinance as Exhibit I.

**SECTION 3.** Funding for this Ordinance is available as part of the Fiscal Year 2005-2006 carry forward budget in Fund 29006000, entitled HOTEL MOTEL TAX FUND, Cost Center 8501910001, entitled CONTRIBUTIONS TO OTHER AGENCIES, General Ledger 5407030, entitled Contributions to Other Agencies. Payment in the amount of \$4,000.00 is authorized to the Jefferson Neighborhood Association and shall be applied to fund reservation document 1000000191.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall be effective on and after the tenth day after passage.

**PASSED AND APPROVED** this 8<sup>th</sup> day of June, 2006.



M A Y O R

**PHIL HARDBERGER**

ATTEST:

  
City Clerk

**APPROVED AS TO FORM:**

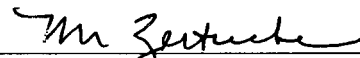
  
for City Attorney

Exhibit  
I

STATE OF TEXAS                    \*

COUNTY OF BEXAR            \* MURAL PROGRAM CONTRACT WITH JEFFERSON NEIGHBORHOOD  
ASSOCIATION

CITY OF SAN ANTONIO            \*

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and the Jefferson Neighborhood Association (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Office of Cultural Affairs is designated as the managing City department (hereinafter referred to as "OCA") for the City; and

WHEREAS, in an effort to combat problems with graffiti, City has developed a Mural Program, by the passage of Ordinance No. 98757, in which mural are painted in graffiti-prone areas to enhance the community and deter graffiti; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

WHEREAS, City wishes to award funds to Contractor to carry out a project entitled Culebra Park Neighborhood Association Mural Project & the Jefferson United Methodist Church Mural Project (hereinafter referred to as "the Project"); NOW THEREFORE:

The parties hereto agree as follows:

#### I. SCOPE OF WORK

- 1.1 Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Letter of Request, which includes a Project description and location, affixed hereto and incorporated herein for all purposes as Attachment 1.

#### II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on June 1, 2006 ("Effective Date") and shall terminate on September 30, 2006. It is the understanding and agreement of the parties that the license provided by Section 5.1 shall survive this Contract.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XI.

#### III. CONSIDERATION

- 3.1 In consideration, City will compensate Contractor in an amount not to exceed \$ 4,000
- 3.2 Consequently, Contractor agrees to comply with the Special Provisions set forth in Article XV, below.
- 3.3 City shall pay Contractor the full amount specified in Section 3.1 upon satisfactory completion of the Project, which shall be solely determined by City through the Executive Director of OCA. No compensation shall be due Contractor until final acceptance of the Project by City.

#### IV. AUDIT

- 4.1 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.
- 4.2 Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except there is litigation or if the audit report covering such agreement has not been accepted. Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.
- 4.3 City may, at its sole discretion, require Contractor to use any and all of City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and Contractor shall abide by such requirements.
- 4.4 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.
- 4.5 Should any expense or charge that has been paid for with City funds be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than ten (10) days from the date of notification of such disapproval or disallowance by City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order.
- 4.6 Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of Contractor and shall not be paid from any Project funds received by Contractor under this Contract.

## V. COPYRIGHTS

- 5.1 Contractor agrees to contractually require the artist creating the Project ("Artist") to grant to City a perpetual, non-exclusive license to reproduce the Project, distribute copies of the Project to the public, display copies of the Project publicly and prepare works based upon the Project. Pursuant to such License, Contractor shall require that Artist authorize City to utilize photographs and other reproductions of the Project for educational, public relations, arts promotional and other non-commercial purposes.

## VI. INSURANCE

- 6.1 Contractor agrees to comply with the following insurance provisions:
- Contractor shall maintain at all times for the duration of this Contract liability insurance good and sufficient to meet the terms and conditions herein, particularly, but not limited to, indemnification. If required by City, an original certified copy of an insurance certificate, originating from Contractor's agent or insurance broker must be submitted by Contractor to City not later than ten (10) days from the date of such request.

## VII. INDEMNITY

- 7.1 **CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

(A) Contractor covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, City the elected officials, employees, officers, directors, volunteers, and representatives of City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall promptly advise City in writing of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation of and defense of such claim or demand at Contractor's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.

(B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article is an INDEMNITY extended by Contractor to INDEMNIFY, PROTECT and HOLD HARMLESS, City from the consequences of City's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of City is the sole cause of the resultant injury, death, or damage. Contractor further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

#### VIII. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

8.1 Contractor agrees to comply with the following Small, Minority or Woman-owned Business Advocacy Policy:

(A) Contractor is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Contractor agrees that Contractor will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Contractor further agrees that Contractor will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Minority or Woman-owned Business Advocacy Policy and City's Equal Opportunity Affirmative Action policy, these policies being available in City's Department of Economic Development, and the City Clerk's Office.

(B) If the amount of funds to be paid to Contractor in Article III., section 3.1 of this Contract is for \$200,000.00 or more, then the Contractor agrees to submit to the City a Good Faith Effort Plan ("GFEP") indicating Contractor's utilization of Small, Minority and Woman-owned Business Enterprises no later than fifteen (15) days from the date of execution of this Contract. If City approves the GFEP, and City subsequently finds material deficiencies in any aspect of the GFEP, Contractor will be required to submit a written report to City's Department of Economic Development. Contractor will also be required to submit a supplemental Good Faith Effort Plan indicating efforts to

resolve any deficiencies. A denied Supplemental Good Faith Effort Plan, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by Contractor. Failure to obtain an approved Supplemental Good Faith Effort Plan, within ninety (90) days of initial denial shall constitute a default and result in penalty on Contractor of \$1,000.00 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitute a further (additional) condition of default by Contractor and which can, at the option of the Executive Director of OCA, result in forfeiture of the entirety of this Contract.

#### IX. APPLICABLE LAWS

- 9.1 Contractor agrees to abide by any and all federal, state and local laws, rules, regulations, policies and procedures and any amendments or additions to such laws, rules, regulations, policies and procedures as may be promulgated.

#### X. NO SOLICITATION/CONFLICT OF INTEREST

- 10.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 10.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 10.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 10.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
  - (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 10.5 Contractor acknowledges that it is informed that Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 10.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by

Section 2-52 (c) of the City Ethics Code. If Contractor is a business entity, Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### XI. TERMINATION

- 11.1 Termination for Cause - Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 11.2 Termination for Convenience - This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 11.3 Notwithstanding any other remedy contained herein or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of City, Contractor may be placed on probation during which time City may withhold reimbursements in cases where it determines that Contractor is not in compliance with this Contract. Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.

#### XII. PROHIBITION OF POLITICAL ACTIVITIES

- 12.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan.

#### XIII. ADVERSARIAL PROCEEDINGS

- 13.1 Contractor agrees to comply with the following provisions:
- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity; and
  - (B) Contractor, at City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against City remains unresolved

#### XIV. SPECIAL PROVISIONS

- 14.1 Indecency. The following is City's policy statement regarding material and/or performances under OCA's Arts Agency Contracts:

(A) Contractor is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised.

(B) Contractor must make OCA aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty (30) days prior to the actual activity.

(C) The City Council shall have the right to terminate this Contract upon finding that Contractor's activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

- 14.2 Tourism Impact. Contractor shall provide to City, prior to or at the time this Contract is executed, a list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry. Contractor may satisfy this requirement by submitting an existing calendar of events for the Contract period, provided that Contractor delineates which events on said calendar meet the specified requirements. Contractor shall update said list or calendar in the event of any modifications or additions.

- 14.3 Removal/Relocation. Contractor acknowledges that the location of the Project may necessitate future removal or relocation that may subject the Project to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation of the Project, if practical and economically feasible as determined by City in its sole discretion, will occur, whenever possible, in conformity with the guidelines and review requirements listed in City's Unified Development Code, Article VI, Division 5, Section 35-656. Contractor agrees that a City decision made under this paragraph regarding if, when and how to remove the Project is final. Contractor shall consult City and obtain City's consent prior to the removal or relocation of the Project.

Contractor shall obtain Artist's express consent to both the installation and removal of the Project and shall contractually require Artist to waive his/her Moral Rights to the Project. It is agreed that if the Project, or any portion thereof, is removed from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, the Project may not thereafter be referred to as "a Project by Contractor".

- 14.4 Display and Maintenance. A label identifying Contractor, the title of the Project and the year it is completed shall be publicly displayed in the area adjacent to the Project.

Contractor shall provide information on the Project requested by OCA for its files. Contractor shall provide the City with one 35-mm color slide of the Project, accurate in color and detail, within thirty (30) days after the Project has been completed.

Contractor shall be available at such time or times as may be agreed between City and Contractor to attend any and all dedications of the Project. City may arrange for publicity for the complete Project in such art publications and other media as may be determined to be necessary by City.

Contractor shall be responsible for all maintenance, repairs and restoration of both Projects for a period of 12 months

City, through OCA, shall consult with a Contractor regarding repairs and restoration, when practical. To facilitate such consultation, Contractor shall notify OCA of any change in Contractor's permanent address. If Contractor is unable or unwilling to perform any necessary repairs or restoration, City may have such work performed in accordance with recognized principles of conservation.

#### XV. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 15.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

#### XVI. ASSIGNMENT

- 16.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

#### XVII. AMENDMENT

- 17.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of OCA shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:
- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing Contract funding during the term of this Contract shall not exceed the foregoing amount;
  - B. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment I) of this Contract;
  - C. modifications to the insurance provisions described in Article VI of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of OCA.

#### XVIII. SUBCONTRACTING

- 18.1 Any subcontracting of the services covered by this Contract shall be approved by City of San Antonio City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 18.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

#### XIX. OFFICIAL COMMUNICATIONS

- 19.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City

City of San Antonio  
Office of Cultural Affairs  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Contractor:

Jefferson Neighborhood Association  
2352 W. Mulberry  
San Antonio, Texas 78201

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

#### XX. VENUE

- 20.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

#### XXI. GENDER

- 21.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### XXII. AUTHORITY

- 22.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide OCA verification of the foregoing requirements no later than the execution date of this Contract.

#### XXIII. INDEPENDENT CONTRACTOR

- 23.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 23.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 23.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

#### XXIV. SEVERABILITY

- 24.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

#### XXV. ENTIRE CONTRACT

- 25.1 This Contract and its attachments constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective as of the Effective Date specified in Section 2.1.

#### CITY OF SAN ANTONIO:

\_\_\_\_\_  
Felix Padrón  
Executive Director  
Office of Cultural Affairs

APPROVED BY:

\_\_\_\_\_  
Sheryl Sculley  
City Manager

#### CONTRACTING AGENCY: ~~Jefferson Neighborhood Association~~

\_\_\_\_\_  
Ted Guerra, President  
Jefferson Neighborhood Association  
2352 W. Mulberry  
San Antonio, TX 78201

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Agenda item #18

**CITY OF SAN ANTONIO  
OFFICE OF CULTURAL AFFAIRS DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager

FROM: Felix Padrón, Office of Cultural Affairs Director

SUBJECT: Contract with Jefferson Neighborhood Association For Two Murals

DATE: June 8, 2006

**SUMMARY AND RECOMMENDATIONS**

An ordinance authorizing the execution of a Mural Program Agreement with the Jefferson Neighborhood Association, providing \$4,000.00 from the Graffiti Abatement Program for two murals to be located at the corners of Donaldson and Wilson and Culebra and El Centro.

The Cultural Arts Board and Staff recommend approval of this ordinance.

**BACKGROUND INFORMATION**

On January 29, 2004, City Council authorized the establishment of the Graffiti Abatement Program utilizing project balances from various community projects in Council Districts 6, 7, 9 and 10. Both murals in this agreement will be in Council District 7.

The Jefferson Neighborhood Association will contract with artist, Fernando Andrade to partner with the Jefferson United Methodist Church on the wall located on Donaldson and Wilson. The wall has had a history of graffiti problems. The artist has already painted two murals since their painting almost two years ago. These two murals have not been tagged since they have been painted. The local church and members of the community have had input into the mural design and have worked very closely with the artist who also a resident of the local community. The artist has agreed to maintain the proposed mural for a period of one year. To create a sense of community ownership, the artist also agreed to involve local artists from Jefferson High School and the Church's Youth Ministry group to help paint the mural.

With the Jefferson Neighborhood Association acting as fiscal agent, the second mural is in a partnership between the same artist, the Culebra Park Neighborhood Association, and the local business on the corner of Culebra and El Centro. This wall has also had a long history of graffiti. The artist will involve youth from the community and will culminate the project with a mural dedication recognizing the youth who helped paint the mural. The artist has also committed to maintaining the project for one year.

## **POLICY ANALYSIS**

This request is consistent with The Cultural Collaborative's objective to provide greater access to arts and culture to residents throughout San Antonio and supports community partnering projects among homeowner associations, business alliances, neighborhood associations, community groups, and the arts community. It is also consistent with the City's Graffiti Abatement Program to help prevent and deter graffiti.

## **FISCAL IMPACT**

Approval of this request will not require the appropriation of additional funds and will not affect the City's General Fund. The funding comes from the Community and Visitor Facilities Fund.

## **COORDINATION**

This ordinance has been coordinated with the Cultural Arts Board, City Councilwoman Elena Guajardo, the Management and Budget Department, the Finance Department, the City Attorney's Office and the City Manager's Office.

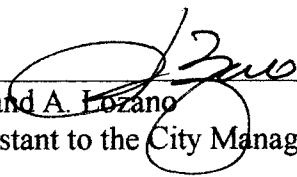
## **SUPPLEMENTARY COMMENTS**

Discretionary Contract Disclosure Form is attached.



Felix Padrón

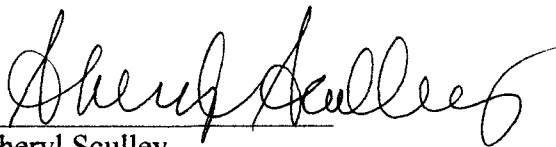
Director, Office of Cultural Affairs



Roland A. Lozano

Assistant to the City Manager

Approved for Council Consideration:



Sheryl Sculley

City Manager

**City of San Antonio**  
**Discretionary Contracts Disclosure**

For use of this form, see Section 2-59 through 2-61 of the City Code (Official Code).  
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity<sup>1</sup> that is a **party** to the discretionary contract:

*Fernando Andrade - Artist*

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):



No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.



No subcontractor(s); or

List subcontractors:

*Fernando Andrade - Artist*

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.



No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:			
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:


**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

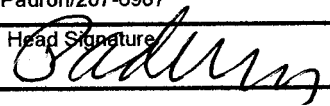
☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: <i>Town President</i> Company or D/B/A: <i>Afternoon Neighborhood Association</i>	Date: <i>4/18/06</i>
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<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

DO NOT TYPE IN THIS SPACE		<b>CITY OF SAN ANTONIO</b>		<b>Request For Ordinance/Resolution</b>		Consent <input type="checkbox"/> Individual <input type="checkbox"/> Item No. <b>18</b> Ord. No.	
<b>Approval</b>							
Finance	Budget						
Legal	Coordinator						
Date: June 8, 2006		Department: Office of Cultural Affairs		Contact Person/Phone #: Felix Padron/207-6967			
Date Council Consideration Requested: June 8, 2006		Deadline for Action: June 8, 2006		Dept. Head Signature 			
<b>SUMMARY OF ORDINANCE</b>							
<p>An ordinance authorizing the execution of a Mural Program Agreement with the Jefferson Neighborhood Association, providing \$4,000.00 from the Graffiti Abatement Program for two murals to be located at the corners of Donaldson and Wilson and Culebra and El Centro.</p> <p>The Cultural Arts Board and Staff recommend approval of this ordinance.</p> <p style="text-align: center;">Council Memorandum Must be Attached To Original</p>							
<p>Other Depts., Boards, Committees Involved (please specify):</p> <p>This ordinance has been coordinated with the Cultural Arts Board, City Councilwoman Elena Guajardo, the Management and Budget Department, the Finance Department, the City Attorney's Office and the City Manager's Office.</p>							
<p>Contract signed by other party</p> <p style="text-align: center;">Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>							
<b>FISCAL DATA (If Applicable)</b>							
Amount Expended				Funds/Staffing Budgeted Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Positions Currently Authorized Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>  Impact on future O & M None			
Fund 2900600      SAP GL Account 5407030  *Cost Center 8501910001 (Fund reservation 1000000191)							
*Internal Order No. *(Fill out only the field that is appropriate to your council action.)				*WBS (Capital Proj.) If positions added, specify Class and Job No.			
<b>Comments:</b> Request consent agenda.				Please submit 3 copies with your original			